



Montoya, Darlene <dmontoya@nmag.gov>

## Policies and Procedures related to OIS

3 messages

**Brian C. Lindley** <blindley@bernco.gov>  
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Mon, Jan 23, 2017 at 7:56 AM

Attached you will find our SOP and MOU related to deadly force incidents.

If you need anything further, please do not hesitate to contact me.

Thank you



### BRIAN LINDLEY

Chief Deputy, Criminal Investigations Bureau  
400 Roma NW, Albuquerque, NM 87102  
Email: [blindley@bernco.gov](mailto:blindley@bernco.gov)  
O: (505) 468-7061 C: (505) 250-9593  
[www.bernco.gov](http://www.bernco.gov)

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2 attachments



image001.jpg  
14K

 **NMDPSresponseOIS.pdf**  
1653K

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**Montoya, Darlene** <dmontoya@nmag.gov>  
To: "Brian C. Lindley" <blindley@bernco.gov>

Mon, Jan 23, 2017 at 9:02 AM

Thank you so much Chief Deputy Lindley.

Have a wonderful day and be safe.

[Quoted text hidden]

—  
Darlene Montoya, Administrator  
New Mexico Attorney General's Office  
408 Galisteo Street  
Santa Fe, New Mexico 87501  
[\(505\) 490-4854](tel:(505)490-4854)

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**Brian C. Lindley** <[blindley@bernco.gov](mailto:blindley@bernco.gov)>  
To: "Montoya, Darlene" <[dmontoya@nmag.gov](mailto:dmontoya@nmag.gov)>

Mon, Jan 23, 2017 at 9:15 AM

Thank You!

Brian Lindley  
Chief Deputy  
Bernalillo County Sheriff's Department  
[\(505\) 250-9593](tel:(505)250-9593)

**From:** Montoya, Darlene [mailto:[dmontoya@nmag.gov](mailto:dmontoya@nmag.gov)]  
**Sent:** Monday, January 23, 2017 9:02 AM  
**To:** Brian C. Lindley <[blindley@bernco.gov](mailto:blindley@bernco.gov)>  
**Subject:** Re: Policies and Procedures related to OIS

[Quoted text hidden]



Montoya, Darlene <dmontoya@nmag.gov>

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## Policies and SOP related to OIS

1 message

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**Brian C. Lindley** <blindley@bernco.gov>  
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Mon, Jan 23, 2017 at 8:14 AM

I apologize, but I just noticed that your office requested additional information related to training.

There is no set "timeline" as to when a new detective will attend a homicide or Officer Involved Shooting training. Bernalillo County Sheriff's Departments goal is to train new detectives as quickly as possible. Each detective assigned within the Violent Crimes and Homicide Unit will be provided basic detective training from within the unit and be given the opportunity to attend more specialized and detailed training as classes become available.

The Criminal Investigation Bureau has begun a review of who we send to lead or assist in deadly force encounters. Our goal is to provide additional training to the top investigators within the Violent Crimes and Homicide Unit and rely solely on these detectives as "OIS" investigators. This would then ensure the same investigators are utilized and will begin a solid working relationship with other agencies.

Currently we do not require any annual or training updates to lead or assist in deadly force incidents.

Thank you for your time and I again apologize for the second email.



### BRIAN LINDLEY

Chief Deputy, Criminal Investigations Bureau  
400 Roma NW, Albuquerque, NM 87102  
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## MEMORANDUM OF AGREEMENT

Between the  
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY  
And the  
BERNALILLO COUNTY SHERIFF'S OFFICE  
And the  
ALBUQUERQUE POLICE DEPARTMENT  
And the  
RIO RANCHO POLICE DEPARTMENT

This Memorandum of Agreement (MOA), dated 10/8, 2014, is made and entered into and agreed to by and between the New Mexico Department of Public Safety, the Bernalillo County Sheriff's Office, the Albuquerque Police Department and the Rio Rancho Police Department.

**WHEREAS** pursuant to 29-2-18, NMSA 1978, the chief and other members of the New Mexico State Police, who, when duly commissioned and sworn under the provisions of Sections 29-2-1 through 29-2-29, NMSA 1978, shall have the following powers and shall perform the following duties:

1. They shall be conservators of the peace within the state, with full power to apprehend, arrest and bring before the proper court all law violators within the state;
2. Upon request of any officer or agency of the state, charged with the duty of enforcing any law of the state, made to the Secretary of Public Safety, one or more members of the New Mexico state police may be temporarily designated specifically to enforce the provisions of such law; and

**WHEREAS** pursuant to 4-41-2, NMSA 1978, the Bernalillo County Sheriffs shall have the following powers and shall perform the following duties:

1. They shall be the conservators of the peace within the county;
2. They shall suppress assaults and batteries;
3. They shall apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them, and

**WHEREAS** pursuant to 35-15-4, NMSA 1978, the Bernalillo County Sheriff's Office, the Albuquerque Police Department and the Rio Rancho Police Department may serve any process or make any arrests authorized to be made by any city or town officer; and

**WHEREAS** pursuant to 3-13-2, NMSA 1978, the Albuquerque Police Department and the Rio Rancho Police Department shall apprehend any person in the act of violating the laws of the State or the ordinances of the municipality and bring him before competent authority for examination and trial. In the discharge of proper duties, the Albuquerque Police Department and the Rio Rancho Police Department shall have the same powers and be subject to the same responsibilities as sheriffs in similar cases;

**WHEREAS** the above referenced public agencies desire to enter into this MOA to exercise their common power pursuant to NMSA 1978, Section 29-1-1 to investigate all violations of the criminal laws of the state which are called to the attention of any officer or of which the officer is aware, to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken, and to cooperate with and assist the attorney general, district attorney or other prosecutor, if any, in all reasonable ways.

**THEREFORE** the parties hereby agree as follows:

**1. SCOPE OF WORK:**

- A. The purpose of this MOA is to establish a formal protocol among the above named law enforcement agencies for the following types of investigations:
  - 1) Officer-Involved Shooting
  - 2) Other Serious Use of Force
  - 3) In Custody Death
- B. A multi-agency Task Force, with representatives from each of the law enforcement agencies subject to this agreement, is hereby created to investigate the aforementioned situations. Each member of this task force, including supervisors, must have a minimum of three years police experience to include one year of felony crime investigative experience.
- C. The parties also agree that this multi-agency Task Force, or an agency identified herein, may be requested by the head of one of the other agencies to this agreement, or a designee, to investigate any other officer-involved suspected criminal action including, but not limited to, off-duty or non-duty related incidents.
- D. A single agency will be designated as the “Lead Agency” in a particular investigation, with the other agencies providing investigative support and supplemental assistance in the investigative effort, as needed. The law enforcement agency that employs the officer involved in one of these situations shall be designated as the “Lead Agency” for the investigation. If a situation involves more than one agency, the Lead Agency shall be the agency that initiated the enforcement action. The Department of Public Safety, New Mexico State Police Division, reserves the right to be designated Lead Agency for incidents involving its personnel. If the law enforcement agencies cannot agree on a Lead Agency, they agree to seek direction from the local District Attorney’s Office to designate the Lead

Agency.

E. Task Force members will respond to the designated Command Post location for the incident within one hour of notification. Upon arrival, the Task Force members will await instructions and an Incident Briefing which will begin as soon as possible but not before all Task Force Members are present. It will be the responsibility of the Lead Agency's on-scene investigations supervisor to insure all members are present and to determine when briefings will be conducted. The initial Task Force briefing will include: all Primary Task Force Investigators and Investigations supervisor, Primary Crime Scene Investigators and Crime Scene Investigations Supervisor, assisting investigators, the representative/s from the District Attorney's office and the representative/s from the Office of Medical Investigator. In those instances where Albuquerque Police Department is the Lead Agency, Albuquerque Police Department's counsel and the City of Albuquerque Independent Review Officer (or designee) may be present at the initial Task Force briefing but the briefing shall not be delayed if they are not present on scene. An Executive Briefing **may follow** the initial Task Force briefing. The Primary Investigators will designate a representative to provide the Executive Briefing and any subsequent briefings.

F. The Task Force is responsible for conducting a thorough and appropriate investigation of each event it is called out to investigate. The responsibilities include:

- Gathering preliminary information from officers and witnesses.
- Conducting thorough canvasses of the area of the incident to insure all potential witnesses are contacted and interviewed and all potential recordings of the incident are located and reviewed. All interviews and any other evidence collected during canvassing will be documented and entered into evidence with the Lead Agency.
- Conducting and documenting recorded interviews of all involved personnel, with all recordings and documentation provided to the Lead Agency.
- Requesting, obtaining and executing all necessary search and/or arrest warrants related to the incident.
- Assisting with death notification to the next of kin upon the request of the Lead Agency. Deceased parties will not be publicly identified prior to next of kin death notification.
- Reviewing the incident facts to determine the appropriate date and time at which information may be released to the public and media, while focusing on maintaining the integrity of the investigation.
- The Head of the Lead Agency will have the final decision on the release of any information.
- Officers who used deadly force will be interviewed in accordance with the employing agency's policies.

- The Primary Investigator for the Lead Agency should notify the assisting Primary Investigator/s of any information that is going to be released to the public prior to its release.
- The Primary Investigators will conduct a debriefing for other Task Force members prior to leaving the scene of an incident and at each stage of the investigation as they deem necessary.
- The Lead Agency will compile all necessary reports and documents and submit these as a completed case to the District Attorney's office in a timely manner.

G. Each agency participating in these investigations shall be responsible for any associated costs required by their own personnel (i.e. salaries and overtime pay). Each agency will make available to these investigations the use of its equipment and facilities as requested/required by the multi-agency Task Force.

H. The Public Information Officer duties will be performed by the Lead Agency, unless otherwise agreed to by all parties.

I. Any law enforcement agency within the jurisdiction of Bernalillo County or the City of Rio Rancho, which is not a party to this MOA, may request an investigation by the Task Force of any Officer Involved Shooting, Serious Use of Force, or In-Custody Death. In addition, any law enforcement agency from outside the jurisdiction of Bernalillo County or the City of Rio Rancho may request an investigation by this Task Force if one of its officers is involved in any of the above situations within Bernalillo County or the City of Rio Rancho. The determination of the Lead Agency in these cases will be made by the Task Force supervisors. Any disagreements in this determination will be referred to the local District Attorney or his/her designee for final designation.

## **2. INTERNAL AFFAIRS INVESTIGATION**

Nothing in this agreement shall prevent or limit any law enforcement agency from conducting a separate internal affairs investigation of officer-related situations or incidents. It is noted that this Task Force in no way is to be utilized as an internal affairs investigations unit. Each agency agrees to conduct its own administrative investigation utilizing proper personnel, separate and independent of the criminal investigation by the Task Force. At no time is the information obtained during the course of the internal investigation to be revealed to the Task Force investigators.

## **3. REVIEW, REVISION AND TERMINATION OF MOA**

This MOA shall remain in effect unless or until it is terminated by the participating agencies. Any request to modify or revise this agreement must be done in writing and must be agreed to by all the undersigned

parties. Any agency may terminate its participation in this MOA by written notification to all participating agencies.

4. **DISTRIBUTION OF PROPERTY OR SURPLUS FUNDS**

No property will be acquired as a result of the MOA. No surplus funds will be available as a result of this MOA as there are no funds that will be distributed.

5. **APPLICABLE LAW AND LIABILITY**

This MOA shall be governed by the laws of the State of New Mexico, and the parties shall comply with all applicable laws, ordinances and codes of the State. If a term of this agreement is inconsistent with such authority, then the term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. As among the parties, each shall be solely responsible, only as permitted by law, for any liability arising from personal injury or damages to persons or property occasioned by its employees, officials or agents in performance of this MOA and each is subject to the immunities and limits of the New Mexico Tort Claims Act.

IN WITNESS WHEREOF, the parties have executed this Agreement which becomes effective as of the date of approval by the Department of Finance and Administration.

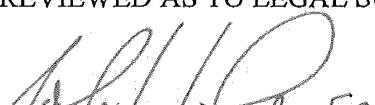
  
\_\_\_\_\_  
Gregory J. Fouratt, Cabinet Secretary  
New Mexico Department of Public Safety

9/18/14  
Date

  
\_\_\_\_\_  
Pete N. Kassetas, State Police Chief  
New Mexico Department of Public Safety

9/18/14

REVIEWED AS TO LEGAL SUFFICIENCY:

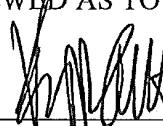
  
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Amy Orlando, General Counsel  
New Mexico Department of Public Safety

10.7.14  
Date

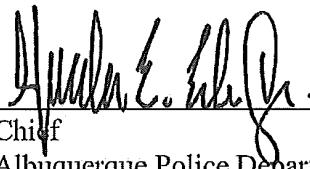
  
\_\_\_\_\_  
Sheriff  
Bernalillo County Sheriff's Department

9.25.14  
Date

REVIEWED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Randy Audio  
Bernalillo County Sheriff's Department

9/25/14  
Date

  
\_\_\_\_\_  
Chief  
Albuquerque Police Department

9/22/2014  
Date

REVIEWED AS TO LEGAL SUFFICIENCY:

Kathryn Levy  
(Name) Kathryn Levy, Deputy City Attorney  
Albuquerque Police Department

9-22-14  
Date

Michael Geier  
Chief  
Rio Rancho Police Department  
REVIEWED AS TO LEGAL SUFFICIENCY:

9/28/14  
Date

MICHAEL GEIER  
(Name)  
Rio Rancho Police Department

9/29/14  
Date

Jennifer Vogel Brown  
City Attorney  
City of Rio Rancho

10/1/2014  
Date

## **ROLE OF DISTRICT ATTORNEY**

The District Attorney's Office shall send a senior prosecutor to the scene of the investigation in the three delineated situations identified in the Memorandum of Agreement. If requested by the prosecutor, a DA investigator shall also be at the scene as an aide to the prosecutor. The prosecutor shall provide legal advice at the scene.

Second Judicial District Attorney  
10/8/14  
Date

Thirteenth Judicial District Attorney  
9/29/14  
Date

## **CALL-OUT PROCEDURES AND PROTOCOL**

### **OFFICER-INVOLVED SHOOTING/SERIOUS USE OF FORCE/IN-CUSTODY DEATH INCIDENT INVESTIGATIONS**

When an incident occurs requiring the activation of the NM Department of Public Safety/Bernalillo County/Albuquerque/Rio Rancho Task Force, please attempt to contact the following personnel from each agency in the ORDER LISTED with information on where the incident has occurred and where staging is being held. In turn, the supervisor contacted will activate task force members to respond to the scene.

#### **NEW MEXICO STATE POLICE:**

- Name: Ph: (Office) Ph: (Cell)
- Name: Ph: (Office) Ph: (Cell)

#### **BERNALILLO COUNTY SHERIFF'S DEPARTMENT:**

- Name: Ph: (Office) Ph: (Cell)

#### **ALBUQUERQUE POLICE DEPARTMENT:**

- Name: Ph: (Office) Ph: (Cell)
- Name: Ph: (Office) Ph: (Cell)

#### **RIO RANCHO POLICE DEPARTMENT:**

- Name: Ph: (Office) Ph: (Cell)
- Name: Ph: (Office) Ph: (Cell)

Bernalillo County Sheriff's Department  
\* Rules and Regulations \*

Effective date: May 20, 2014

**314 USE OF FORCE**

Deputies shall use only that force which is reasonably necessary to protect the sanctity of human life, preserve and protect individual liberties, and to effect lawful objectives. All Deputies will act in good faith in the exercise of force. The Deputies' options can range from a continuum of verbal persuasion to deadly force.

In vesting Deputy Sheriffs with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

**DEFINITIONS:**

**DEADLY FORCE**

Any use of force that is likely to cause death or serious physical injury.

**SERIOUS PHYSICAL INJURY**

A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.

**REQUIRED ACTION**

Any offensive or non-passive defensive action by a Deputy, or some intentional action under his/her immediate control.

**REQUIRED ACTION INJURY**

Any injury to a suspect that results from offensive or non passive defensive action by a Deputy, or some intentional action under his /her immediate control.

**LESS LETHAL FORCE**

Force that is intended to cause or which is likely to cause bodily harm and in certain circumstances may result in death or great bodily injury.

**LESS LETHAL MUNITIONS**

Munitions, including bean bag rounds, 37mm/40mm exact and direct impact rounds, rubber pellet rounds, foam projectile rounds, and wooden baton rounds, which are designed to incapacitate hostile individuals without causing death or great bodily harm. Although designed to incapacitate without causing death or great bodily injury, there always exists that possibility even when properly deployed.

Bernalillo County Sheriff's Department  
\* Rules and Regulations \*

Effective date: May 20, 2014

**BODILY HARM**

Any physical impairment of the condition of another's body which causes pain or illness.

**RULES AND PROCEDURES:**

**314-1**

**LESS LETHAL FORCE**

- A. Where force is warranted, Deputies should assess the incident in order to determine which technique or tool will reasonably de-escalate the incident and bring it under control safely.
- B. Every Deputy is responsible for weighing all other reasonable means of apprehension or control before resorting to a use of force.
- C. Deputies shall use only that force which is reasonable and necessary to overcome resistance, to protect oneself or another, and to effect lawful objectives.
- D. When a confrontation escalates suddenly, Deputies may use any means or device at hand for self-defense provided that the use of force is reasonable, given the existing circumstances.
- E. Deputies are permitted to use those defensive tactics and less lethal tools with which they are trained, qualified, and certified with, as determined by training procedures, for the resolution of incidents when force becomes necessary.
- F. Every Deputy is expected to consider the use of Department approved options, ranging from verbal techniques, empty hand techniques, and less lethal tools. The following less lethal tools are authorized to be issued :
  1. Expandable Baton
  2. Chemical Agents/Munitions
  3. Handcuffs
  4. Pepper-ball System
  5. Conducted Electrical Weapon
  6. Less Lethal Munitions
    - A. Bean Bag Rounds
    - B. 37/40mm Exact Impact Rounds

Bernalillo County Sheriff's Department  
\* Rules and Regulations \*

Effective date: May 20, 2014

**314-2** C. 37/40mm Direct Impact Rounds

**CONDUCTIVE ELECTRICAL WEAPON (CEW)**

A. There are three separate types of reportable CEW/TASER applications:

1. WARNING SPARK DISPLAY - A non-contact demonstration of the TASER's ability to discharge electricity. A SPARK DISPLAY can be used to gain compliance from a subject whom Deputies believe is about to resist compliance with Deputy's lawful commands and to avoid the TASER being deployed in the Drive Stun, or probe mode. A WARNING SPARK DISPLAY is conducted only when the cartridge has been removed from the TASER.
2. DRIVE STUN - There are two (2) separate modes of DRIVE STUN: (DRIVE STUN does not incapacitate a subject, but may assist in taking a subject into custody).
  - a. DRIVE STUN BACK UP. A technique in which a Taser is placed directly against the subject, and the electric discharge is transmitted through the metal conductors on the Taser (cartridge removed) or an expended cartridge. A DRIVE STUN affects the sensory nervous system (pain compliance) and usually does not cause Neuro Muscular Incapacitation (NMI).
  - b. THREE POINT DRIVE STUN DEPLOYMENT. Probes are deployed with contact or near contact with the subject and the expended cartridge is DRIVE STUN away from the probe impact site. This mode will likely have an NMI effect.
3. PROBE DEPLOYMENT - The TASER is most effective when the cartridge is deployed and the probes make contact with subject. Proper application may result in temporary immobilization of the subject and provide the officer an opportunity to safely take the subject into custody, reducing risk of injury to both the suspect, officers and the public.

**314-3**

**USE OF CONDUCTIVE ELECTRICAL WEAPONS (CEW/TASER)**

- A. In order to determine which technique or weapon will reasonably de-escalate the incident and bring it under control safely, deputies should assess the situations where force is warranted. Deputies shall use only that force which is reasonably necessary to effect lawful objectives.
- B. Deputies will only use the less lethal force TASER after receiving training and certification in its proper use, and according to departmental and manufacturer training guidelines.

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\* Rules and Regulations \*

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- C. All personnel certified to use the TASER must attend a re-certification class annually as recommended by the manufacturer. Training will include review and be familiar with TASER updates and fire at least two (2) cartridges.
- D. When feasible, every effort will be made by deputies deploying the TASER, to inform other involved deputies that a less lethal weapon is being deployed.
- E. The use of a less lethal TASER is authorized:
  - 1. At the discretion of the Deputy where the continued actions of a suspect places the suspect, citizens, or deputies at risk of injury and where physical contact with the subject would increase the likelihood of injury to the suspect, citizens, or deputies.
  - 2. The decision to use the TASER is dependent upon the actions of the subject, the threat facing the officer, and the totality of the circumstances surrounding the incident. The deploying Deputy will have the sole responsibility for properly deploying the TASER while maintaining compliance with S.O.P. section 106.00, ENFORCEMENT OF LAWS, ORDINANCES AND DEPARTMENTAL REGULATIONS, paragraphs E and F.
  - 3. When considering the use of the TASER within the reasonable officer standard. Each Deputy must evaluate the resources available to them and make reasonable application of force based on the totality of the incident. The TASER may also be used as a psychological tool to gain compliance, even when the circumstances are not present to justify deployment.
  - 4. In riot or crowd control to control and arrest principle suspects under direct authority of the squad leader or supervisor and the scene.
  - 5. If an in-custody subject is exhibiting behavior that is likely to inflict a severe injury to themselves or others, a drive stun may be applied. This application will be limited to restoring control/ compliance of a subject who has become a significant danger.
  - 6. The application of this technique on an in-custody subject will only be used in a circumstance where personnel are in fear of severe injury due to the action(s) of the subject who is in custody. All other lesser force options, which are available, should be considered prior to using this technique. Under no circumstances will this option be used as a punitive measure.
  - 7. Deputies will be required to articulate in the Offense/Incident report, the circumstances that required

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the drive stun application on a subject that is in custody and properly restrained. All Deputies present at the incident that witness the deployment of the TASER will document the circumstances present and the use of the TASER in their supplemental reports.

- F. Whenever possible, a warning shall be given to the suspect prior to deployment of the TASER unless such a warning would increase the risk of greater injury to deputies, citizens or the suspect.
- G. Use of the "Drive Stun" is discouraged except in situations where the "probe" deployment is not possible and the immediate application of the "Drive Stun" will bring a subject displaying active, aggressive or aggravated aggressive resistance safely under control. Multiple "Drive Stuns" are discouraged and must be justified and articulated on the Offense/Incident report form. If initial application is ineffective, Deputy will reassess the situation and consider other available options.
- H. After deployment of the TASER, the probes may be removed by the deploying deputy in accordance with manufacturer's training. Deputies will inspect the probes upon removal to ensure that the probe is intact and that the straightened needle is still attached to the probe body as well as the bar near the end of the probe. Medical treatment shall be immediately provided to the suspect at the scene. Follow-up medical treatment at an appropriate medical facility will be provided, if needed. When booking a subject that has received a Probe deployment, Deputies will advise Medical Personnel at the corrections facility that the prisoner has received a Probe deployment. Individuals that have been a subject of an TASER Deployment will be photographed by a FI.
- I. Probes will be treated as a BIOHAZARD disposed of in the appropriate manner after use. If severe injury occurs, the probes, cartridge and AFIDs will be tagged into evidence.
- J. The TASER will not be used:
  - 1. When the Deputy knows that a subject has come into contact with flammable liquids or is in a flammable atmosphere;
  - 2. When the subject is in a position where a fall may cause substantial injury or death;
  - 3. Punitively for purposes of coercion, or in an unjustified manner;
  - 4. To escort or jab subjects;
  - 5. To awaken unconscious or intoxicated individuals, or

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6. When the subject is visibly pregnant, unless deadly force is the only other option available.
7. When the subject is operating a motor vehicle.
8. When the subject is holding a firearm.
9. When the subject is at the extremes of age or physically disabled.
10. In a situation where deadly force is clearly justifiable unless another officer is present and capable of providing deadly force to protect the deputies and/or civilians as necessary.

K. Deputies will notify their immediate supervisor when the ERD/TASER has been deployed in the Drive Stun or Probe manner.

**314-4 EQUIPMENT MAINTENANCE AND HANDLING**

- A. Deputies will only utilize Department Issued TASER's and holsters. The Deputy will carry the TASER in an approved holster on the side opposite the firearm. The use of personally owned devices is prohibited.
- B. The TASER will be inspected for damage and operation at the beginning of each duty shift. Deputies will insure that TASER is in operational condition, i.e., proper battery level, sufficient probe cartridge, etc.
- C. Deputies must conduct a spark check at the beginning of shift to ensure the TASER will function properly. A spark test is an equipment check conducted outside of public view to ensure the TASER is operable. It is conducted by removing the cartridge, test firing the weapon and observing the electrical arc.
- D. The DPM (Digital Power Magazine - Battery) shall remain in the Taser unless it is being replaced. If the DPM is removed from the TASER for more than 4 hours, the internal date and time settings may be reset.
- E. TASER's will not be left in a vehicle when not in use in hot or cold weather.
- F. When the Spark Test is conducted, the deputy will ensure that the DPM is at or above at 20% it will be replaced with a new DPM. DPM's with 20% may be used in training until they reach 1 %.
- G. TASER'S will be downloaded at least once every three months. This will ensure that the date and time are kept current.
- H. A primary and alternate TASER Custodian will be appointed

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and will ensure:

1. An inventory of all TASER'S and to whom they are assigned by serial number and date of manufacture.
2. An inventory of cartridges by serial number and date of manufacture.
3. Ensure that TASER'S are downloaded at least once every three months. Deputies that discharge the TASER in the line of duty will report to FSD to ensure the TASER is downloaded.
4. Maintain a roster of certified deputies and date of certification.
5. Ensure that TASER and cartridges are replaced upon the recommended expiration date.
6. Ensure that the most current DPM is available for updating TASER'S.
7. Track and report deployment statistics on a quarterly basis to the Commander, FSD.
8. Be trained/certified as a TASER Technician.
9. Be responsible for TASER's for preventative maintenance, troubleshooting and returning TASER's for repair.

10. Establish and maintain a Public Information Resource Kit.

**314-5**

**SUPERVISOR'S RESPONSIBILITIES**

- A. Supervisors will insure that when the TASER is used by subordinate personnel that their reports properly articulate the usage of the TASER in their Offense/Incident and supplemental reports.
- B. First line supervisors will respond to the scene when a TASER has been deployed. The first line supervisor will notify the Watch Commander/Lieutenant when an TASER is deployed.
  1. In incidents where the device was improperly used, Supervisors will notify their Watch Commander, or if unavailable, their Area Commander of the alleged misuse. The Lieutenant will be responsible for notifying the Division Commander of the alleged misuse, and will forward a copy of the reports to the Division Commander. In the event of the alleged misuse occurring in a Division other than Field Services, the supervisor will notify their Lieutenant.
- C. Supervisors will direct personnel who have deployed the

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TASER to report to the Field Services Division Office at the Law Enforcement Center to download the TASER.

1. Downloading will be accomplished as follows;

- a. Upon the use of the TASER Deputies will respond within 72 working hours to the Field Services Division to accomplish downloading the TASER.
- b. Deputies assigned to Watches II and III will accomplish downloading during their on-duty time. Deputies assigned to Watch I will accomplish downloading at 0800 hours unless they are scheduled to appear in Court sometime within the 48 hours following a deployment. Watch I Deputies, who are scheduled for Court within this 48-hour time frame, will accomplish downloading while on Court overtime.
- c. When a TASER is deployed and the subject ~~is~~ sustains injuries, the supervisor will ensure that the subject is photographed, the scene is photographed to include the location of the AFIDs. The FI will collect and tag into evidence the AFIDs, cartridge(s) and probe(s) that were deployed.

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**DEADLY FORCE/USE**

- A. The authorized tools that are available to a Deputy are intended to be used as defensive instruments to prevent an assailant from completing a potentially deadly act.
- B. A firearm is discharged with the primary intent to stop or incapacitate. To ensure maximum stopping effectiveness and minimal danger to innocent bystanders and non-participants, the Deputy should shoot at "center body mass" when discharging a firearm.
- C. In the performance of duty, Deputies are authorized to use deadly force, by any means, in order to:
  1. Protect the Deputy or others from what is reasonably believed to be an immediate threat of death or serious physical injury.
  2. Prevent the escape of, or to effect the apprehension of a fleeing felon where there is a reasonable belief the suspect poses a significant threat of death or serious injury to human life should escape occur.
- D. To provide guidelines for an appropriate interpretation of a fleeing felon who would pose a significant threat of death or serious injury, the following is provided:

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1. Suspect is armed and dangerous
2. The suspect was armed and dangerous during the commission of a previously committed felony or the felony resulted in death or serious injury.
- E. Where feasible, some warning should be given prior to engaging in the use of deadly force.
- F. If a Deputy is the victim of an assault which might cause death or serious injury, he/she is not required to retreat, but may stand his ground and defend himself even to the point that deadly force is required, if the use of force would prevent death or serious injury. The rule of self-defense is applicable, regardless of the age or sex of the assailant.
- G. Deputies may utilize deadly force to safely destroy an animal that represents a threat to public safety, as a humanitarian measure where the animal is seriously injured and other alternatives have been exhausted, or when requested by animal control.
- H. Deputies will not intentionally place themselves in the path of a fleeing vehicle and then in self-defense, fire upon the vehicle or its occupants.
- I. Deputies will not discharge a firearm from a moving vehicle.
- J. Warning shots are prohibited.

**314-7**

**USE OF LESS LETHAL MUNITIONS**

- A. In order to determine which technique or weapon will reasonably de-escalate the incident and bring it under control safely, Deputies should assess the situations where force is warranted. Deputies shall use only that force which is reasonably necessary to effect lawful objectives.
- B. Deputies will only use less lethal force agents/munitions after receiving training and certification in their proper use, and according to Departmental training guidelines.
- C. Every effort will be made by Deputies deploying the agents/munitions to inform other involved Deputies that a less lethal munition is being used.
- D. The use of less lethal munitions is authorized when a suspect is placing Deputies or citizens in imminent threat of death or great bodily harm. The exception to this would be a suicidal subject who is threatening to harm himself and the risk of injury or the severity of injury from a less lethal response would be less than if the subject was allowed to harm himself.

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**314-9**

**FIREARMS SAFETY**

- A. Firearms will be carried in a safe and secure manner. Horseplay, as well as flippant and careless behavior, is prohibited.
- B. A Deputy may draw a firearm from a retaining device, with no intent to use it, when necessary to control a high risk situation, or take a felon into custody.

**REPORTING USES OF FORCE**

- A. In instances where Deputies actions result in death or serious injury, the reporting and investigation process will be followed as outlined in the Deadly Force investigations section of this manual.
- B. In all other instances where Deputies actions result in an injury, Deputies shall document the injury or alleged injury in the report of the incident.
  - 1. The Offense/Incident report will include a detailed description of the events leading to the necessity for the use of required action, the amount and type of action used, the nature and extent of injuries and treatment rendered to Deputies and subjects, the identity of combatants, Deputies involved, witnesses and medical personnel involved, and any additional pertinent information.
  - 2. If a Deputy is unable to write the report, the on-duty supervisor will ensure the necessary report is properly prepared and forwarded.
- C. In all instances where deadly force is used or the discharge of a firearm occurs (other than in training or for recreational purposes) Deputies shall immediately notify their supervisor or the next available supervisor in the chain of command.
- D. In all instances where an Conducted Electrical Weapon is deployed, (other than during training or for daily test deployment), Deputies shall:
  - 1. Immediately notify their supervisor or the next available supervisor in their chain of command.
  - 2. Complete an Offense and Incident report detailing the date, time, location, and events surround the deployment of the CEW.
  - 3. Complete an CEW Deployment Form.
  - 4. Complete a download of the CEW computer log within five working days of the deployment.

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5. Turn in a copy of the CEW Download, Initial Offense and Incident Report and ERD Deployment Form to the Administration Section within five working days.

E. In all instances where use of force is utilized (discharges a firearm, takes action that results in or is alleged to have resulted in injury or death of another person, applies force through lethal or less lethal weapons, or applies weaponless physical force) the Deputy shall complete the Use of Force Report Form.

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#### **SUPERVISORY RESPONSIBILITIES**

A. In all instances where deadly force is used the supervisor will immediately notify the Internal Affairs Unit. The Division Commander, Chief Deputy, and Sheriff and Undersheriff will be notified.

B. Supervisors will ensure that a written report is submitted in all instances where a firearm is discharged (other than in training or for recreational purposes).

#### **DEPARTMENTAL RESPONSE**

A. The Department shall conduct both a criminal and an administrative investigation of a deadly force incident.

B. All reported uses of force shall be reviewed by the Deputy's supervisor and forwarded to Command Staff. The Command Staff shall have the discretion to forward the report to the Internal Affairs Unit to determine whether:

1. Departmental policies, rules, or procedures were violated.
2. The relevant policy was clearly understandable and effective to cover the situation.
3. Department training standards were effective and current.

C. All findings of policy violations or training inadequacies shall be reported to the Sheriff for resolution and/or discipline.

D. Appropriate medical aid will be provided after any use of force. This may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by paramedics, or for more serious or life threatening incidents, immediate aid by medical professionals. The deputy has the authority and responsibility to determine and request the appropriate medical care. All requests for medical aid, additional observations or application of first aid will be documented in the incident report by the deputy.

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**324 DEADLY FORCE INVESTIGATIONS**

The Department shall fully investigate all incidents in which citizens coming in contact with personnel who suffer severe injury or death. Personnel of the Department's Deadly Force Investigative Team are required to conduct complete investigations, making use of any physical evidence or witness statements which may be available to collect and preserve physical evidence pertaining to the incident being investigated. Deadly Force Investigative Team personnel are required to collect all physical and testimonial evidence in a manner which ensures that the evidence is useful for courtroom presentation.

The team will be responsible for the investigation of the use of force resulting in death or great bodily injury by Department personnel, with the exception of motor vehicle related incidents.

This team will also investigate the deaths of all persons who are in the custody of the Bernalillo County Sheriff's Department at the time of their death, with the exception of motor vehicle related accidents.

The Sheriff or his designee will be responsible for the formation of a Department "Deadly Force Team", which will be responsible for this type of investigation.

The following guidelines and responsibilities are hereby defined:

**DEFINITIONS:**

**FIRST RESPONDER**

This is the first sworn Deputy to arrive at the scene regardless of rank. The section written under this heading applies to all personnel regardless of assignment.

**FIRST RESPONDING SUPERVISOR**

For the purpose of this section First Responding Supervisor will include only on-duty sworn supervisors.

**DEADLY FORCE INVESTIGATIVE TEAM**

The group of investigators assigned by the Sheriff to investigate the uses of deadly force. These investigator will perform both the investigation and the criminalistics functions as directed by the Deadly Force Team Supervisor.

**CRIMINALISTICS TEAM**

Those personnel of the investigative team assigned to perform criminalistics work at the scene and during the investigation.

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**DEADLY FORCE TEAM SUPERVISOR**

For the purposes of this section, Investigative Supervisor will include the supervisor appointed to this position by the Sheriff or his designee.

**324-1    RULES AND PROCEDURES:**

**FIRST RESPONDER**

- A. The first Deputy to arrive will evaluate injuries and render aid as deemed necessary while attempting to avoid the destruction, or contamination of evidence.
- B. Will identify, detain and separate possible suspects and witnesses.
- C. Field Services Deputies will identify the scope of the scene and then secure an area larger than the scope of the scene.
- D. Field Service Deputies will not unnecessarily enter the perimeter of the crime scene, this section applies to all Field Services personnel regardless of rank or assignment.
- E. Will ensure that a crime scene log is initiated and maintained during the course of the investigation.
- F. Will not relay information pertaining to the investigation to witnesses or by-standers.
- G. Will remain on scene until relieved by the Deadly Force Team supervisor.
- H. All sworn personnel who are deemed as witnesses will be required to submit a detailed Offense/Incident report to the Deadly Force Team supervisor or investigators. These reports are to be completed and turned over to Team personnel prior to the end of the employee's shift, should they be on duty, or prior to their leaving the scene if they are in an off duty capacity.
- I. Any evidence collected prior to the arrival of Criminalistics will be properly documented and then turned over to Criminalistics personnel at the scene.

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**FIRST RESPONDING SUPERVISOR**

- A. Will obtain a full and complete briefing of the circumstances pertaining to the incident. Any information obtained from the involved Deputy(s) shall be taken only after Garrity warnings have been administered.

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- B. Will also insure that all potential witnesses have been separated and secured and that a crime scene log is being maintained and that crime scene security is in place.
- C. Will confirm that the Deadly Force Team, the Internal Affairs Unit, the Office of the Medical Investigator, and the District Attorney's Office have been contacted and informed. The supervisor will at this time begin a log indicating where Deputies involved in this investigation are assigned and what their function is at that location.
- D. Will advise concerned Deputy(s) of their Right to Counsel throughout the entire criminal investigation.
- E. Will allow involved Deputy(s) to consult with counsel in private, if requested, prior to any questioning concerning the incident. For purposes of this section a single representative of the BCDSA may assist in lieu of counsel until the time the Deputy(s) attorney(s) arrives, at the Deputy(s) discretion.
- F. Will obtain the name of a companion Deputy from the involved Deputy(s) and attempt to have the companion Deputy contacted.
  - 1. The companion Deputy will be responsible to serve in a supportive role during the subsequent events; however, the chosen companion may be required to provide a statement to investigators.
  - 2. The companion Deputy may be required to provide transportation for the involved sworn or non-sworn personnel as well as to make other arrangements as necessary.
  - 3. Deputies involved in the incident cannot serve as companion Deputies.
- G. Will ensure that involved sworn personnel maintain all clothing and equipment until retrieved by Criminalistics personnel.
- H. Will begin an area canvas to locate any suspects or possible witnesses. All witnesses or suspects will be held for the Deadly Force Team supervisor.
- I. Will remain on the scene until relieved by the Deadly Force Team supervisor. The First Responding Supervisor may not relinquish control of the scene without conducting a full and complete briefing with the Deadly Force Team supervisor.

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THE DEADLY FORCE INVESTIGATIVE TEAM

- A. Will conduct all interviews and statements as necessary.

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- B. Will answer directly to the Deadly Force Team supervisor regardless of his current regular assignment.
- C. No individual suspect photos will be used for the purpose of identification. The investigator will prepare a photo array(s) to be used for identification purposes. An approved photo array identification sheet will accompany all photo arrays shown. Once a photo array has been shown it will be tagged into evidence even if no identification was made from the array.
- D. The investigator will prepare all search warrants, motions to seal and orders to seal to be executed during the course of the investigation. The investigator will insure the search warrants that are prepared prior to a suspect's arrest are accompanied by both a motion to seal and an order to seal.
- E. Investigators will go over all evidence collected with reference to their investigation. Request for additional or specialized evidence examination must be made in writing to the Criminalistics Unit.
- F. Is responsible for all phases of the Criminal Investigation, with the exception of retrieving, processing, securing and collecting evidence.
- 324-4 G. The investigator will ensure that the case is completed in a timely manner and forwarded to the District Attorney's Office upon completion.

**CRIMINALISTICS TEAM**

- A. Will work directly under the supervision of the Deadly Force Team supervisor.
- B. Entrance to the inner perimeter of the crime scene will be allowed only after the Criminalistics investigator has received a full and complete briefing from the Deadly Force Team supervisor. All personnel of the Deadly Force Team are to be present for the initial briefing.
- C. Criminalistics personnel will then enter the crime scene and videotape it in its entirety. Once the videotape is completed the criminalistics unit will withdraw from the scene and review the tape with the lead investigator. At this time, the lead investigator will indicate any special investigative procedures they wish to have undertaken. In the event that a videotape cannot be reviewed on the scene, the lead investigator will accompany the criminalistics investigator on his initial walk through in order to point out special procedures they wish to have performed.
- D. Because access to the scene itself is restricted, this crime scene video will also be made available to the Internal Affairs Unit, the Department Command Staff and the

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Departments Public Information Officer. If for technical reasons a video is not available the lead investigator will brief the above listed personnel after completing the initial crime scene inspection so that the listed personnel can complete their assigned duties.

E. After the completion of the initial crime scene investigation by the Criminalistics Unit, a Deadly Force Team debriefing will take place. Once this debriefing is completed the following parties may have access to the inner perimeter at the discretion of the Deadly Force Team supervisor:

1. Deadly Force Team personnel.
2. Internal Affairs personnel.
3. District Attorney's personnel.
4. Special investigative resources requested by the Team supervisor.

F. The Criminalistics Unit will have immediate access to involved personnel for the purpose of collecting trace evidence. In instances involving the use of a firearm the Criminalistics Unit will perform a primer residue test on the involved personnel and will collect the sworn personnel's firearm and leather gear once they arrive at the Criminal Investigations Division. The Criminalistics unit will collect all items of clothing which have trace evidence present on them.

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**DEADLY FORCE TEAM SUPERVISOR**

- A. The Deadly Force Team supervisor will not accept control of the scene until he has received a full and complete briefing from the Field Services supervisor, to include the identity of Deputies involved in the investigation and their current assignments and status.
- B. After accepting the scene from the First Responding Supervisor the Deadly Force Team supervisor will be responsible for the overall coordination of the investigation.
- C. Will direct the transportation of witnesses and suspects to include the involved Deputy(s) to the Criminal Investigations Division for interviews and/or statements. Transportation arrangements will be made as expeditiously as is reasonably possible.
- D. Will keep all concerned personnel apprised of the investigation's status and will schedule a complete debriefing with the Sheriff's staff within 24 hours of the event and will schedule a debriefing with other involved agencies within 7 - 10 working days.

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- E. Will act as the liaison between outside agencies (i.e. District Attorney's Office, APD, FBI, etc) and the Bernalillo County Sheriff's Department.
- F. Will act as the liaison with the Department's Internal Affairs unit.
- G. Will review any and all information intended for release to the news media, along with the involved Division Commander, the Sheriff or his selected appointee, and the Public Information Officer prior to the release of the information to the media. All information intended for media release must go through this process.
- H. Will have the authority to assign additional personnel, as he deems necessary.
- I. Will ensure that the case is completed, in a timely manner and submitted to the District Attorney's Office for review.
- J. Will be responsible for seeing that Deputy(s) surrendering their firearms for evidential purposes have replacement weapons provided to them immediately upon the collection of the involved weapons and that replacement leather gear and ammunition is also provided at the time. Any other Department issued equipment that is surrendered to the Deadly Force Investigative Team will be replaced as soon as available.

**INTERNAL AFFAIRS UNIT**

324-7

- A. Will monitor the investigative process to assure that only proper investigative techniques are used.
- B. Will complete the Sheriff's Administrative investigation per the guidelines set down in the Internal Affairs section of this manual.

**INTERVIEWS AND STATEMENTS**

- A. The Deputy(s) involved will be advised of their Miranda Warnings prior to the Deadly Force Teams request for a formal statement.
- B. If the involved Deputy(s) do not wish to waive their Constitutional Right to silence the interview will immediately cease.
- C. If the Deputy(s) involved request an attorney, one will be provided prior to questioning.
- D. The involved Deputy(s) will not be required to submit any form of written report or documentation as to the events under investigation should he choose not to.

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- E. Initial interviews will be conducted in private; however, members of the District Attorney's Office, and OMI will be able to monitor any and all questioning. These interviews will be documented with the use of both audio and video recording devices.
- F. The Deadly Force Team supervisor will select the personnel who conduct the interview.
- G. If possible, civilian witnesses, along with Department personnel who are witnesses, will be interviewed prior to the Deputy(s) directly involved in the incident (Note: this does not limit the Deadly Force Team supervisor/ investigator from interviewing the Deputy(s) directly involved in the incident, prior to the interviewing of any witnesses).
- H. The involved Deputy(s) may at this point request to consult with the Department Psychologist or any attorney.
- I. The Department's Internal Affairs representative will schedule an interview for the involved Deputy(s). This interview will take place as soon as is practical. The Internal Affairs interview will be taken following that unit's interview guidelines.

324-8

**ADMINISTRATIVE LEAVE**

- A. Any employee involved in an incident resulting in serious injury or death will be placed on Administrative Leave for a minimum of three days; however, a longer period can be granted if the situation warrants it. The Bureau Chief Deputy or higher authority must authorize the request for leave longer than three days. This time is to be used for both the psychological welfare of the employee and to allow time for an administrative review to be conducted. An administrative review will be conducted on all such incidents to include a documented review that indicates whether policy, training, equipment, or disciplinary issues need to be addressed.
- B. Administrative Leave can also be applicable to non-sworn personnel if a supervisor requests it.

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